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5 IN THE UNITED STATES DISTRICT COURT
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA

7
8 UNITED STATES OF AMERICA,
9 Plaintiff,
10 v.
11 AU OPTRONICS CORPORATION, et al.,
12 Defendants.

No. C 09-0110 SI

**ORDER DENYING DEFENDANTS'
MOTION TO COMPEL THE
GOVERNMENT TO PRODUCE *BRADY*
AND *GIGLIO* DISCOVERY**

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14 On December 16, 2011, the Court heard argument on defendants' motion to compel. Defendants
15 contend that the government has not complied with its discovery obligations under *Brady v. Maryland*,
16 373 U.S. 83 (1963), and *Giglio v. United States*, 405 U.S. 150 (1972).

17 In their request for *Brady* discovery, defendants do not claim that the government has withheld
18 exculpatory material. Rather, they argue that the government has an affirmative obligation to identify
19 where in the documents it has produced such material exists. Defendants emphasize the voluminous
20 discovery in this case – by their count, 37 million pages – and assert that the government has
21 “suppressed [the evidence] by burying it within a massive number of documents.” Motion at 2.

22 Typically, the government has no obligation to “single out” particular pieces of exculpatory
23 evidence. *Rhoades v. Henry*, 638 F.3d 1027, 1039 (9th Cir. 2011) (en banc) (“Rhoades points to no
24 authority requiring the prosecution to single out a particular segment of a videotape, and we decline to
25 impose one.”); *see also United States v. Mulderig*, 120 F.3d 534, 541 (5th Cir. 1997) (“[T]here is no
26 authority for the proposition that the government’s Brady obligations require it to point the defense to
27 specific documents with[in] a larger mass of material that it has already turned over.” (quoting *United*
28 *States v. Mmihat*, 106 F.3d 89, 94 (5th Cir.1997)); *United States v. Warshak*, 631 F.3d 266, 297 (6th

1 Cir. 2010) (rejecting argument that “the government shrugged off its obligations under *Brady* by simply
2 handing over millions of pages of evidence and forcing the defense to find any exculpatory information
3 contained therein”). Some courts have identified circumstances in which the government’s voluminous
4 production might violate its *Brady* obligations. Those circumstances, however, are a far cry from those
5 in this case:

6 We do not hold that the use of a voluminous open file can never violate *Brady*. For
7 instance, evidence that the government “padded” an open file with pointless or
8 superfluous information to frustrate a defendant’s review of the file might raise serious
9 *Brady* issues. Creating a voluminous file that is unduly onerous to access might raise
similar concerns. And it should go without saying that the government may not hide
10 *Brady* material of which it is actually aware in a huge open file in the hope that the
defendant will never find it. These scenarios would indicate that the government was
acting in bad faith in performing its obligations under *Brady*.

11 *United States v. Skilling*, 554 F.3d 529, 577 (5th Cir. 2009), vacated in part on other grounds, — U.S.
12 —, 130 S. Ct. 2896, 177 L. Ed. 2d 619 (2010); see also *United States v. Salyer*, 2010 WL 3036444, at
13 *7 (E.D. Cal., August 2, 2010) (finding that government had heightened obligations where it produced
14 “voluminous” discovery to “a singular, individual defendant, who is detained in jail pending trial, and
15 who is represented by a relatively small defense team”).

16 Defendants have made no showing that the government has used its production as a means of
17 concealing *Brady* material. Further, the defendants here are well-resourced, have interests that are
18 largely aligned, and perhaps most importantly, have the benefit of years of participation in the civil
19 cases. Accordingly, the Court rejects defendants’ contention that the government must affirmatively
20 identify the location of *Brady* material within its production.

21 Defendants’ request for *Giglio* material asserts that the government has withheld information
22 pertaining to the “plea agreements, immunity agreements, and non-prosecution agreements” the
23 government has with cooperating witnesses. Motion at 14. Although the government has turned over
24 the final, operative agreements to the defense, it has refused to produce “all documentation related to
25 any plea negotiations or internal communications between government agencies that resulted in those
26 agreements.” Opp’n at 13; Motion at 14.

27 The Court agrees with the government that the material the defendants seek is not relevant to
28 the credibility of the government’s witnesses. Of course, if there is a separate basis for disclosure – for

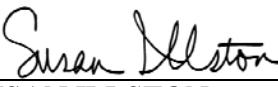
1 example, if the documents contain a material inconsistent statement of a witness – the government may
2 have a separate obligation to disclose the materials the defendants seek.

3 Accordingly, the Court DENIES defendants' motion to compel the government to produce *Brady*
4 and *Giglio* discovery. Docket No. 424.

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6 **IT IS SO ORDERED.**

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8 Dated: December 23, 2011



SUSAN ILLSTON
United States District Judge

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